

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 CLEMENTE TUITELE ATOFAU,

13 Defendant.

14 CASE NO. C17-0153-JCC

ORDER

15 This matter comes before the Court on Defendant's motion to dismiss count three of the  
16 Indictment, Felon in Possession of a Firearm (Dkt. No. 46). Defendant argues that the statute  
17 defining the crime, Title 18, U.S.C. section 922(g)(1), is facially unconstitutional and  
18 unconstitutional as applied, because it exceeds Congress's powers under the Commerce Clause.  
19 (*Id.* at 1.) Defendant's motion is untimely under Federal Rule of Criminal Procedure 12(b)(3).  
20 The pretrial motions deadline was April 26, 2018, and Defendant filed the present motion on  
21 May 7, 2018. (*See* Dkt. Nos. 28, 46.) Defendant has not shown good cause for delay, and thus  
22 the Court need not consider the motion. Fed. R. Crim. P. 12(c)(3).<sup>1</sup>

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25 <sup>1</sup> The Court notes that Defendant's legal arguments have been soundly rejected by the  
26 Ninth Circuit and other circuit courts addressing this issue. *United States v. Polanco*, 93 F.3d  
555, 563 (9th Cir. 1996); *United States v. Gonzales*, 307 F.3d 582, 586 (9th Cir. 2002). In  
addition, the Supreme Court recently denied a petition for certiorari containing the same  
argument. *Kitchen v. United States*, No. 17-7521 (U.S. May 14, 2018).

1           Thus, Defendant's motion to dismiss count three of the indictment (Dkt. No. 46) is  
2 DENIED as untimely.

3           DATED this 22nd day of May 2018.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE

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